

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NICHOLAS LEE FARMER, #0656088	§	
Plaintiff,	§	
	§	
	§	
v.	§	3:13-CV-3954-P-BK
	§	
	§	
MOLLY, et al.,	§	
Defendants.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

On September 30, 2013, Plaintiff, a *pro se* state prisoner, filed a civil rights complaint against Molly, the Apartment Manager of View at Kessler Park, and Maggie, the District Manager of Lincoln Property. (Doc. 3). He alleges Defendants “deprived [him] of the right to retrieve [his] property and belongings” from an apartment he shared with a friend, for which he seeks \$900,000 in compensatory damages. (Doc. 3 at 4, 6, 9). The Court granted Plaintiff’s motion to proceed *in forma pauperis*, but did not issue process pending preliminary screening. For the reasons that follow, this case should be summarily dismissed.

I. ANALYSIS

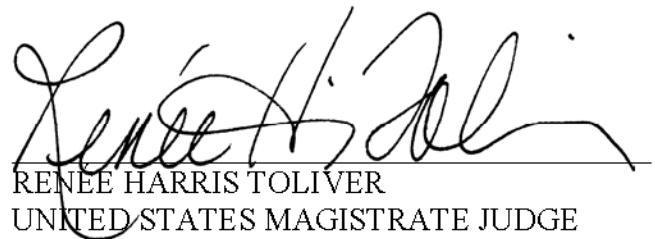
Because Plaintiff is proceeding *in forma pauperis*, the complaint is subject to screening under [28 U.S.C. §§ 1915\(e\)\(2\)\(B\) and 1915A\(b\)](#). Those statutes provide for *sua sponte* dismissal of a complaint if the Court finds that it (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” [Neitzke v. Williams, 490 U.S. 319, 325 \(1989\)](#). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” [Id. at 327](#).

Plaintiff filed his complaint on the standard form used by prisoners for seeking relief under [42 U.S.C. § 1983](#). Plaintiff, however, cannot satisfy the “under color of state law” requirement. *See West v. Atkins, 487 U.S. 42, 48 (1988)* (to pursue a claim under [section 1983](#), a plaintiff must allege (1) that he was deprived of a right secured by the Constitution or laws of the United States; and (2) that the deprivation was caused by one acting under color of state or federal law). Defendants are private individuals and Plaintiff does not allege, let alone prove, that their alleged actions were fairly attributable to the state. *See Cornish v. Corr. Servs. Corp., 402 F.3d 545, 549 (5th Cir. 2005)* (summarizing tests used to decide whether a private actor’s conduct can be fairly attributable to the State). Therefore, Plaintiff’s complaint lacks any basis in law and should be dismissed as frivolous.

II. RECOMMENDATION

For the foregoing reasons, it is recommended that this action be summarily **DISMISSED** with prejudice as frivolous. *See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)*. This dismissal will count as a “strike” or “prior occasion” within the meaning [28 U.S.C. § 1915\(g\)](#).¹

SIGNED November 1, 2013.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

¹ Section 1915(g), commonly known as the “three-strikes” provision, provides: “[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See [28 U.S.C. § 636\(b\)\(1\); FED. R. Civ. P. 72\(b\)](#). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See [*Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 \(5th Cir. 1996\)](#).



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE